IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 435 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

ARATSINH N BARIYA

Appearance:

1. Criminal Appeal No. 435 of 1992

MR KT DAVE, LD. APP for Appellant.

MR JA ADESHRA for Respondent No. 1

MR JM BUDDHBHATTI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 08/07/2004

ORAL JUDGMENT

Heard Mr.K.T. Dave, Ld. APP appearing for the appellant-State, Mr. J.A. Adeshra, learned counsel appearing for the respnodent no.1 and Mr. J.M. Buddhbhatti, learned counsel appearing for the respondent

no.2.

2. This is an appeal filed under Section 378 of the Criminal Procedure Code against the order of acquittal dated 3rd December, 1991, passed by the learned 4th Joint Judicial Magistrate First Class, Mirzapur, Ahmedabad (Rural), while disposing the Criminal Case No.544/89. The respondents are the orig. accused and at the relevant point of time, they were residing in Ranip Police Line. As per the case of the prosecution, both the respnodents-accused persons have committed offence punishable under Sections 143, 147, 341, 427 and 188 of the Indian Penal Code and also offence punishable under Sections 3 and 4 of the Police (Incitement and Disaffection) Act, 1922. A complaint came to be registered with Sabarmati Police Station on 27th July, 1988. Initially, the respondents-accused were apprehended by the police and thereafter chargesheeted for the aforesaid offence.

3. The case of the prosecution in brief is that the respondents-accused were found in the mob involved in the activities of the Police Union and they were shouting slogans in favour of the Police Union and against the Police Officers of their own department. The mob of police personnel was shouting abuses and ultimately, the mob damaged the Government properties, mainly the eastern wall of the Police Line and the accused damaged the Government properties of the Police Line. At that time, according to the prosecution, both the accused were arrested from the spot of the incident.

4. I have considered the case of the prosecution and the nature of evidence led by the prosecution. The concerned learned Magistrate after appreciating the oral as well as the documentary evidence led by the prosecution, reached to the conclusion that the prosecution has failed in bringing home the charge against the respondents-accused and, therefore, they should be acquitted. The concerned learned Magistrate has mainly considered the material contradictions and hostility of the panchas, who were examined during the trial. It is true that both these respondents-accused were in the Police force and the Police agitation against the State Government was on, on the date of incident. The arrest of accused from the spot of incident when actually the property of Government was damaged, has not been believed by the concerned learned Magistrate and for reaching to this conclusion, the concerned learned Magistrate has considered the totality emerging from the evidence led by the prosecution. The findings recorded

by the concerned learned Magistrate are not only logical but they are also in accordance with law. There is neither any perversity in appreciation of evidence nor any illegality has been committed in accepting some part of evidence and rejecting the other part. The finding of the concerned learned Magistrate is that the prosecution has failed to bring home the charge beyond doubt. So accepting the reasons assigned by the concerned learned Magistrate, it is not necessary to assign any separate or individual reasons when the order of acquittal is not required to be reversed on merits. The settled legal proposition is that the Court sitting in appeal against the order of acquittal has a limited jurisdiction and unless the patent illegality or perversity in the findings is noticed, the acquittal normally should not be reversed.

5. The reasons recorded by the learned Magistrate are logical and there is no element of perversity or patent illegality. It is true that the facts of the decision in the case of Hariram v. State of Rajasthan, reported in 2000 SC 1647 are materially different. But the ratio propounded by this Court and the Apex Court in number of decisions has been reiterated in this decision observing that where there is no infirmity in arriving at the conclusion, the finding of acquittal normally should not be interfered with. It is true that this Court is supposed to assign reasons while confirming the judgment and order of acquittal recorded by the trial Court as held by the Apex Court in the case of State of Orissa v. Debraj Tarini, reported in 2000 (10) SCC 173. But adopting the reasons assigned by the trial Court, the appeal against the judgment and order of acquittal can be decided and it is not necessary to rewrite the judgment or to assign individual separate reasons. The Apex Court in a decision in the case of Dwarkadas v. State of Hariyana, reported in (2002) 1 SCC 204, has reiterated the accepted principle of law where it has been held that the judgment and order of acquittal normally should not be reversed merely because the other view is also possible. In the same way, the observations of the Apex Court in the case of Kanshiram v. State of Madya Pradesh, reported in AIR 2001 SC 2902 (Re :para:21), in respect of appeal against the order of acquittal, positively would help the respondents-accused and not to the appellant-State.

The sum and substance of the aforesaid ratio is that merely because the Court on appeal could reach to any finding other than the finding recorded by the concerned learned Magistrate by itself would not confer jurisdiction to reverse the order of acquittal.

6. For short, this Court finds the order of acquittal recorded by the concerned learned Magistrate absolutely in accordance with law and, therefore, the order of acquittal passed by the concerned learned Magistrate is not required to be interfered with.

For the reasons recorded hereinabove, this appeal is hereby dismissed. The order of acquittal dated 3rd December, 1991 passed by the learned 4th Joint Judicial Magistrate First Class, Mirzapur, Ahmedabad (Rural), in Criminal Case No.544/1989, is hereby confirmed. Bail bond, if any, stands discharged.

(C.K. Buch, J)

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